

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Improving Public Safety Communications in the	)	
800 MHz Band	)	
	)	
Consolidating the 900 MHz Industrial/Land	)	WT Docket No. 02-55
Transportation and Business Pool Channels	)	DA 03-19

**REPLY COMMENTS OF THE  
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

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## **SUMMARY**

As CTIA has stated throughout this proceeding, the wireless industry remains committed to working with Public Safety and the other licensees in the 800 MHz band to address the ultimate goal of this proceeding -- resolution of interference problems. In these Supplemental Reply Comments, CTIA reaffirms its concerns with the Joint Commenters' proposal. As CTIA stated in its initial Comments, Reply Comments, Further Comments, Supplemental Comments, and now these Reply Supplemental Comments, the proposal from Nextel and the Joint Commenters is critically flawed and should not be adopted by the Commission. Interested parties across a wide range of the 800 MHz debate also have voiced significant concerns about complexity, cost, feasibility, and legality, including Public Safety organizations, utilities, manufacturers, and CMRS providers. There is ample support in the Comments for the Commission to acknowledge these significant infirmities in the Joint Commenters' plan and to adopt another more timely, less complicated solution.

As CTIA stated in its Supplemental Comments, and as many commenters including representatives from the states of Michigan and Washington and the city of Philadelphia have highlighted, the Joint Commenters' plan is incredibly complicated and will be difficult to complete. Additionally, as several commenters noted, Nextel's funding plan relies on a risky installment payment type mechanism to fund the proposed realignment. Further, as representatives from the cities of New York, Philadelphia, and San Diego, the State of Michigan, and the Public Safety Improvement Coalition have highlighted, it is likely that the amount proposed by Nextel to fund relocation may be insufficient. Cellular carriers, including particularly small and rural carriers, are also concerned that they would be required to do costly filter upgrades under the Joint Commenters' plan that would not otherwise be necessary. CMRS

carriers should not be forced to expend resources to address problems created by Nextel and the plans of the Joint Commenters.

CTIA and other commenters also are troubled with the grant of spectrum outside of the 800 MHz band to Nextel. CTIA emphasizes that it is not necessary to reward the company that is creating the majority of the interference problems – Nextel – with a spectrum windfall in the 1.9 GHz band. It creates an unfair competitive advantage and asks the Commission to violate Section 309 (j) of the Communications Act by giving Nextel spectrum for terrestrial wireless service without an auction.

Even more importantly than the infirmities listed above, the Joint Commenters' proposal does not provide a timely solution to address an interference problem that needs immediate attention, fails to provide a long-term solution to the interference problem, and fails to provide Public Safety with upgraded equipment. CTIA again submits that the Commission should adopt its alternative approach that incorporates three broad proposals for addressing interference: 1) improved Public Safety equipment and focused CMRS-Public Safety interference mitigation efforts; 2) if necessary, interim rebanding *within* the 800 MHz band, and 3) relocation of 800 MHz Public Safety users to the 700 MHz band. As CTIA has argued throughout this proceeding, mitigation, combined with rebanding *within* the 800 MHz band, and ultimately a move to dedicated spectrum in the 700 MHz band, is the most sensible and timely solution to the Public Safety interference problem.

For these reasons, CTIA believes that the Commission should not implement the Joint Commenters' plan and should instead adopt CTIA's proposal. The Commission should conduct a rigorous cost/benefit analysis as part of any decision in this proceeding, and as these comments

demonstrate, the costs in terms of time and resources of the Joint Commenters' Plan far outweigh the uncertain benefits and legal risk involved.

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The Cellular Telecommunications & Internet Association (“CTIA”)<sup>1</sup> submits these Reply Comments in response to the Commission’s Public Notice (“PN”)<sup>2</sup> regarding the “*Supplemental Comments*” of the Joint Commenters filed with the Commission on December 24, 2002.<sup>3</sup> In addition to CTIA, numerous parties have highlighted the infirmities in the most recent version of the Joint Commenters’ proposal, either opposing outright or voicing significant concerns with the “take it or leave it” proposal. While CTIA does not support the proposal because it believes that there are better alternative solutions than the approach offered by the Joint Commenters, the wireless industry remains committed to working with Public Safety and the other licensees in the

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<sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> *Wireless Telecommunications Bureau Seeks Comment on “Supplemental Comments of the Consensus Parties” Filed in the 800 MHz Public Safety Interference Proceeding, WT Docket No. 02-55, DA 03-19 (rel. January 3, 2003) (“PN”).*

<sup>3</sup> *Supplemental Comments of the Consensus Parties, WT Docket No. 02-55, (December 24, 2002) (“Joint Commenters’ Supplemental Comments”).*

800 MHz band to address the ultimate goal of this proceeding -- resolution of interference problems.

## I. INTRODUCTION

In its initial Comments, Reply Comments, Further Comments, and Supplemental Comments in this proceeding, CTIA opposed Nextel's original band restructuring proposal<sup>4</sup> and the Joint Commenters' initial proposal.<sup>5</sup> CTIA presented an alternative approach that would significantly improve Public Safety communications in the 800 MHz band.<sup>6</sup> As CTIA stated in its most recent Supplemental Comments,<sup>7</sup> the new proposal from the Joint Commenters retains the problems CTIA identified with the original proposal, and adds some additional concerns. In particular, as both CTIA and many commenters have highlighted,<sup>8</sup> the Joint Commenters' plan is

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<sup>4</sup> See *Promoting Public Safety Communications – Realigning the 800 MHz Land Mobile Radio Band to Rectify Commercial Mobile Radio – Public Safety Interference and Allocate Additional Spectrum to Meet Critical Public Safety Needs* ("Nextel Proposal") (Nov. 21, 2001).

<sup>5</sup> See *Joint Reply Comments of Aeronautical Radio Inc, et al.*, Improving Public Safety Communications in the 800 MHz Band, Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, WT Docket No. 02-55 (Aug. 7, 2002).

<sup>6</sup> See *Comments of the Cellular Telecommunications & Internet Association*, Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, filed May 6, 2002, at 4-6 ("CTIA Comments"), see also *Reply Comments of the Cellular Telecommunications & Internet Association*, Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, filed Aug. 7, 2002, at 4-6 ("CTIA Reply Comments"); *Further Comments of the Cellular Telecommunications & Internet Association*, Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, at 3-4 ("CTIA Further Comments") (filed Sept. 23, 2002).

<sup>7</sup> See *Comments of the Cellular Telecommunications & Internet Association*, Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, (filed February 10, 2002) ("CTIA Supplemental Comments")

<sup>8</sup> See, e.g., *Comments of the National Rural Electric Cooperative Association*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 2 ("*National Rural Electric Cooperative Association Comments*") (filed February 10, 2003) ("National Rural Electric Cooperative Association is more firmly convinced than ever that the Consensus Plan is an imperfect and needlessly complex solution."); see *Comments of the*

incredibly complicated and resource intensive, relies on a risky installment payment type mechanism to fund the proposed realignment, creates an unfair advantage for some existing licensees within the 800 MHz band, and asks the Commission to violate Section 309 (j) of the Communications Act by giving Nextel spectrum for terrestrial wireless service without an auction.

Even more importantly, as CTIA stated in its Comments, it does not provide a timely solution to address an interference problem that needs immediate attention, fails to provide a long-term solution to the interference problem, and fails to provide Public Safety with upgraded equipment. There are other alternatives in the record that do not suffer from the same deficiencies as the Joint Commenters' plan, including a proposal by CTIA, that would provide better alternatives to the plan currently being considered by the Commission.

## **II. THE SUPPLEMENTAL COMMENTS CONFIRM THAT THE JOINT COMMENTERS' PROPOSAL IS NOT WORKABLE**

### **A. Many Supplemental Commenters Highlighted the Complexity, Inadequacy, and Legal Infirmities of the Joint Commenters' Proposal.**

As CTIA stated in its Supplemental Comments, the Joint Commenters' proposal is extraordinarily complicated involving many moving parts. This view is not shared by CTIA alone. As the United Telecom Council and the Edison Electric Institute stated in their comments, "the augmented proposal provided by the Private Wireless Coalition and other parties is so replete with legal inadequacies, administrative complexity and poor policy direction that it

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*Communications Division, Michigan Department of Information Technology*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 2 ("*Michigan Comments*") (filed February 10, 2003) ("We do, however, have significant concerns about many aspects of the plan.").



must fail.” “The time, effort, expense and administrative nightmare of the PWC three-plus-year timeline simply are not necessary.”<sup>9</sup>

Further, as the National Association of Manufacturers and MRFAC echoed, there “are a number of procedural concerns. The Coalition Plan would create an exceedingly complex, and wholly new and untested, regulatory regime to implement re-tuning/reimbursement.” Under the proposal, “there is no right of appeal with respect to whether adequate reimbursement would be paid to a relocating incumbent, the timing of a relocation, whether a relocation process would significantly disrupt a licensee’s business operations, or whether the relocation facilities as actually constructed do, in fact, provide ‘comparable facilities.’”<sup>10</sup>

Adding to the cost and complexity of the Joint Commenters’ proposal, King County and the NPSPAC region where King County is located suggest that additional personnel need to be dedicated to address relocation and coordination issues. In particular, King County stated that “while the entities that make up the KCRCB have consistently been strong participants in our regional planning efforts (Region 43), we are increasingly finding that our combined situation of economic challenges and security uncertainty are requiring us to put more of our staff efforts on our own operational needs, making less time available for them to participate in regional processes.”<sup>11</sup> NPSPAC Region 43 concurred, stating that it “strongly supports the need for a national pool of experts and funding to work with the RPCs as they undertake the re-banding in

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<sup>9</sup> See *Comments of the United Telecom Council and the Edison Electric Institute*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at Summary, 5 (“*UTC and Edison Comments*”) (filed February 10, 2003).

<sup>10</sup> See *Comments of The National Association of Manufacturers and MRFAC*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 11 (“*NAM and MRFAC Comments*”) (filed February 10, 2003).

<sup>11</sup> See *Comments of King County Regional Communications Board*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 3 (filed February 10, 2003).

their Regions. The Committees on their own can't do this work effectively, and left to their own resources, we will see staggered and inconsistent results across the county.”<sup>12</sup>

CTIA and other commenters also highlighted the problems with the creation and operation of the Relocation Coordination Committee. CTIA was not the only commenter to question the legality of aspects of the Relocation Coordination Committee. The National Association of Manufacturers and MRFAC stated that “the Plan contemplates an unlawful delegation of Commission functions to an administrative entity (the Relocation Coordination Committee) without adequate safeguards against discriminatory practices, and with an inappropriate limitation on appellate rights of incumbent licensees.”<sup>13</sup> Additionally, the United Telecom Council and the Edison Electric Institute also “opposed strongly the Retuning Coordination Committee as currently proposed, which would put nearly unlimited authority over affected licensees into the hands of a small number of entities with no guarantee of non-discriminatory treatment.”<sup>14</sup> “This group would not be subject to the safeguards inherent in a federal agency.”<sup>15</sup>

As CTIA stated in its Supplemental Comments, the proposal also suffers from a fundamental equitable flaw – there is no assurance incumbents will be made whole during the transition. This could create a significant problem for Public Safety communications. If several Public Safety entities within a region will not agree to relocate because they are not being fully funded, what happens to the Joint Commenters’ timetable, particularly when “simultaneous

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<sup>12</sup> See *Comments of NPSPAC Region 43 Regional Review Committee*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 2 (filed February 10, 2003).

<sup>13</sup> See *NAM and MRFAC Comments* at Summary.

<sup>14</sup> See *UTC and Edison Comments* at Summary, 8.

<sup>15</sup> See *id.* at 8.

relocation” is proposed?<sup>16</sup> As the Communications Division of the Michigan Department of Information Technology states, “many public safety agencies and small organizations are severely constrained by limited budgets and availability of technical expertise and simply may not have the resources to respond to this issue.”<sup>17</sup> The Michigan Department explains that “the complexity and scope of this proposal requires in-depth knowledge of many areas of regulatory policy and system technical configuration. The legal and technical aspects of the proposal are not easily understood, and the volume of documentation is a considerable challenge to absorb. Among the costs of the Consensus plan drafters seem to have overlooked is the cost of diverting the technical personnel of operating systems away from their normal duties in order to accomplish the Plan.”<sup>18</sup>

As CTIA stated in its Supplemental Comments, the items listed above are examples of just some of the numerous issues that would have to be addressed if the proposal of the Joint Commenters were to be adopted. At any point in time, this process could break down. The multiple flaws -- procedural, equitable, and legal -- in the proposal and the multiple moving parts make implementation of the Joint Commenters’ plan almost impossible. Even if they are addressed, the Commission must cross its fingers, micromanage,<sup>19</sup> and hope that the intricate

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<sup>16</sup> See *Joint Commenters’ Supplemental Comments* at 32, n.52. (The Joint Commenters have stated that with regard to NPSPAC and Public Safety licenses, simultaneous relocation is required because “NPSPAC licensed users are often capable of ‘roaming’ to Public Safety systems using Guard Band channels, particularly in the event of an emergency.” *Id.*)

<sup>17</sup> See *Michigan Comments* at 2-3.

<sup>18</sup> See *Michigan Comments* at 2-3.

<sup>19</sup> The United Telecom Council and the Edison Electric Institute stated that “in the parlance of the recently released FCC Spectrum Policy Task Force report, the PWC Proposal amounts to the mother of all “command and control” regulatory models.” See *UTC and Edison Comments* at 4.

process does not break down over the four year period. If it does break down, the Public Safety entities, for whom this proceeding was initiated, may be worse off then they are now.

As CTIA stated in its Supplemental Comments, before embarking on such a complicated and resource-intensive undertaking, the Commission must recognize that the mechanism chosen by the Joint Commenters fails to provide a timely solution to the CMRS-Public Safety interference problem. Rebanding will take close to four years to complete, and that is without factoring in any significant overruns.<sup>20</sup> Even at that point, interference will remain.<sup>21</sup> The Commission cannot afford to wait four years for a solution that -- even according to its proponents<sup>22</sup> -- will not fully address the interference problem.

**B. The Joint Commenters' Proposed Funding Mechanism Provides No Guarantee of Funding.**

As CTIA stated in its Supplemental Comments, Nextel's offer to fund the rebanding also suffers from serious flaws. Like the overall proposal, the funding mechanism is too complicated and offers too many opportunities for problems to arise. In particular, Nextel proposes the use of an installment-type mechanism to make a 3% down payment on its pledge -- in essence receiving more than a billion dollars worth of spectrum for only a \$25 million dollar initial payment. CTIA reiterates that this installment payment approach should be all too familiar to the Commission and should be avoided at all costs.

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<sup>20</sup> See *Joint Commenters' Supplemental Comments* at Appendix D.

<sup>21</sup> *Id.* at 39 ("The Joint Commenters recognize, however, that no band plan can eliminate entirely all possibility of interference under all circumstances."); see also *Supplemental Comments* at Appendix F-1 ("As described in Nextel's September 23 comments, the Consensus Plan will reduce the probability of current CMRS -- public safety intermodulation interference by more than 90 percent for many current NPSPAC licensees, and by as much as 65 percent for public safety licensees in the non-cellular block remaining closest to the new cellular channel block.").

<sup>22</sup> *Id.*

Nextel's proposal places the Commission once again in the untenable position of having to rely on the good intentions of a licensee that it will make all of its payments. As Verizon stated, "the plan's source of funding is equally illusory. While it dangles an \$850 million fund, it omits any up-front funding commitments that can be enforced, let alone legally binding commitments for long-term reimbursement."<sup>23</sup> In addition to the concerns raised by CTIA in its Supplemental Comments comparing Nextel's proposal to the NextWave proceeding, Boeing also voiced concerns regarding Nextel's use of 1.9 GHz of spectrum as collateral, stating that "the provisions contained in the Supplemental Filing cause concern regarding awarding the license to a questionable shell entity, the propriety of using spectrum as collateral, and the wisdom of potentially allowing the spectrum to lie fallow for several years."<sup>24</sup> Accordingly, as CTIA stated in its Supplemental Comments, Nextel's December 24<sup>th</sup> funding pledge should be viewed with the same skepticism as its earlier \$500 million dollar pledge -- a monetary commitment that contains no guarantee.

### **C. Nextel's Offer to Subsidize the Rebanding and Relocation of the 800 MHz Incumbents Is Likely Insufficient.**

While Nextel is "highly confident that its commitment will cover the reasonable returning/relocation costs of [the] 800 MHz incumbent public safety licensees pursuant to the Consensus Plan," many commenters are not as certain. Nextel proposes to "fund, up to a total of \$850 million,"<sup>25</sup> but does not offer any solution as to what the Commission and Public Safety

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<sup>23</sup> See *Comments of Verizon Wireless*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 2 (filed February 10, 2003.).

<sup>24</sup> See *Comments of the Boeing Company*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at iii, 23 (filed February 10, 2003.).

<sup>25</sup> See *Joint Commenters' Supplemental Comments* at ii-iii.

should do if Nextel funds are insufficient to complete rebanding. Several commenters, including the City of Philadelphia, the City and County of San Diego, and the City of New York voiced “apprehension over the adequacy of reimbursement of costs associated with relocating or retuning.”<sup>26</sup> Boeing also voiced concern, stating that “evidence indicates that relocation costs will *overwhelmingly* exceed the proposed funding pool.”<sup>27</sup>

The City of Philadelphia highlighted the complexity of the proposed plan, the lack of adequate funding, and the concerns over being fully funded for all aspects of relocation, stating that,

“any final relocation plan adopted by the Commission should clearly provide that public safety agencies are entitled to full reimbursement for both the direct and indirect costs of relocation, including expenses for planning and design, modifications to existing equipment and software, replacement equipment and software where modifications are not sufficient, reprogramming radio and base stations, expert engineering and other technical assistance, and all necessarily incurred costs for managing the changeover, including, in particular, police and fire officer overtime and other costs incurred to maintain adequate coverage levels while radios and base stations are out of service for retuning or modification.”<sup>28</sup>

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<sup>26</sup> See *Comments of the City of Philadelphia*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 1 (“*Philadelphia Comments*”) (filed February 10, 2003); see also *Comments of the City and County of San Diego*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 13 (filed February 10, 2003) (“despite the addition of \$350 million to the original \$500 million proposed for contribution by Nextel, it is not convinced that even the new amount is sufficient to accomplish all the tasks that will draw upon it. The County’s suggestion for a permanent, renewable source of funding may still be required to backstop the private contribution.”); *Comments of the City of New York*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 5, (“*New York Comments*”) (filed February 10, 2003.).

<sup>27</sup> See *Comments of the Boeing Company*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at iii, 23, (filed February 10, 2003.).

<sup>28</sup> See *Philadelphia Comments* at 2

Further, the New York City commenters “remain troubled by the fact that no provision has been made for additional funding in the event that the \$700 million that is now dedicated for public safety relocation runs out after the Consensus Plan has been approved and relocation begun. Given that the cost for public safety relocation is estimated in the Supplemental Comments to exceed \$698 million, even the slightest cost overrun would break the fund.”<sup>29</sup> The Public Safety Improvement Coalition also remains “uncertain that the \$700 million committed by Nextel will cover all the potential liabilities, and for a region to miss reassignment because the money runs out is unacceptable.”<sup>30</sup> CTIA has stated that if this occurs during one of the multiple phases of rebanding, the resulting interference impact on Public Safety could be greater than if no movement had occurred.

As CTIA stated in its supplemental comments, it is not inconceivable that this situation could arise. While the Joint Commenters visited 16 public safety systems throughout the country in order to gather information regarding their equipment for cost estimates, their sample was “biased somewhat toward large, complex public safety communications systems.”<sup>31</sup> It is likely that their sample was not indicative of the true public safety environment in the United States. CTIA argued that the unique nature of smaller Public Safety systems was not factored into the cost equation, and that this could result in a significant discrepancy between actual and predicted costs. For example, as CTIA stated in its Supplemental Comments, if the smaller Public Safety operations not factored in to the cost equation need a greater number of handset replacements,

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<sup>29</sup> See *New York Comments* at 5 (Commenting on the \$700 million (out of the \$850 million) set aside for Public Safety under the proposal).

<sup>30</sup> See *Comments of the Public Safety Improvement Coalition*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 2 (filed February 10, 2003.)

<sup>31</sup> See *Joint Commenters’ Supplemental Comments* at Appendix A-1, n.1.

the costs could increase dramatically. This concern was echoed by the Public Safety organizations who believe that “there continues to be uncertainty as to the number of radios that will need to be replaced as part of the plan, which could have a significant impact on the total costs.”<sup>32</sup> The Joint Commenters note in their proposal that “the substantial cost difference between replacing and reprogramming a radio is such that small variations in the total number of radios to be replaced will have a significant impact on the total cost of implementing the Consensus Plan.”<sup>33</sup> This “significant impact” could rapidly consume the assets of the fund. As stated above, if the fund is depleted before the transition is completed, Public Safety and other 800 MHz licensees could find themselves worse off than if the transition had not occurred at all.

The comments of ALLTEL, Cingular, AT&T, Sprint, Southern LINC, and US Cellular highlighted this concern, stating that “if the money runs out for any reason, including the likely need to replace more than 1% of public safety receivers, relocation will simply stop. Such an unfinished relocation would wreck havoc on interoperability efforts and would negate the whole effort by not solving interference at all for those entities not relocated.”<sup>34</sup> Michigan echoed this concern, stating that “should adequate funding not be available, public safety agencies may be left stranded in an interference environment.”<sup>35</sup>

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<sup>32</sup> See *Joint Commenters’ Supplemental Comments* at 6 (In reaching their cost estimate, the Joint Commenters estimate that only 1% of the public safety radios will have to be replaced.) See *Id.* at 6, Appendix A-4.

<sup>33</sup> *Id.* at 6-7.

<sup>34</sup> See *Comments of ALLTEL Communications, Inc., Cingular Wireless LLC, AT&T Wireless Services, Inc., Sprint Corporation, Southern LINC, and United States Cellular Corporation*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 11 (“*Comments of ALLTEL, Cingular, AT&T, Sprint, Southern LINC, and US Cellular*”) (filed February 10, 2003.).

<sup>35</sup> *Michigan Comments* at 3.



Public Safety entities had additional concerns with the estimates of the Joint Commenters. Michigan, for example, observed that while the Joint Commenters visited systems to “gain information on possible costs, [they] doubt that the examination of such a system could provide realistic estimates of the cost or complexity involved in modifying our 181-site system.”<sup>36</sup> The City of Philadelphia questioned how “no analysis is provided to justify the extrapolation from sixteen systems to the entire nation.”<sup>37</sup> These comments highlight the inadequacy of the Joint Commenters’ cost estimates and show how quickly the relocation fund could be consumed.

**D. Cellular Carriers Should Not Be Forced to Make Costly Upgrades as a Result of the Adoption of a Relocation Plan that Benefits Nextel**

If the Joint Commenters’ plan is adopted in whole by the Commission, some A band cellular carriers may be forced to make costly upgrades to filters that would not otherwise be necessary. Under the Joint Commenters’ proposal, these filters are required to provide an additional 45 dB of noise attenuation at the frequencies below 859 MHz to reduce the interference potential. Depending upon the carrier’s configuration and the solution implemented by the carrier’s manufacturer, the cost could be significant. In particular, small and rural carriers could be affected as necessary upgrades could take up a significant portion of their proposed capital expenditures.

Several carriers have estimated this amount to be as much as \$5,000 per cell site. One carrier estimated that it could cost the company up to \$350,000 to make the necessary filter upgrades, assuming they are available for its equipment. Nextel and the Joint Commenters have not addressed this cost in their proposal. As stated above, this impact could be significant on

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<sup>36</sup> See *Michigan Comments* at 3.

<sup>37</sup> See *City of Philadelphia Comments* at 2.

small and rural carriers. Many of these carriers may not be responsible for interference into Public Safety, yet would need to upgrade to conform with the requirements of the Joint Commenters' proposal as part of the continued granting of their licenses, and the continued granting of type acceptance for equipment manufacturers. CTIA supports the comments from Motorola that, if the Commission adopts the Joint Commenters' proposal, this upgrade should not be applied in a blanket fashion to all base stations. Furthermore, the Commission should allow for exemptions in cases where no threat of interference exists.<sup>38</sup> Those remaining CMRS carriers that would be required to upgrade if the Joint Commenters' proposal were adopted should not be forced to expend resources to address problems created by Nextel and the Joint Commenters' proposal. If the Commission were to adopt the proposal of the Joint Commenters, it should ensure that all costs of the plan are covered, including those incurred by cellular carriers adapting to new rules as part of the proposal.

### **III. THE JOINT COMMENTERS' PROPOSAL TO PROVIDE SPECTRUM TO NEXTEL OUTSIDE OF THE 800 MHZ BAND IS UNNECESSARY, ILLEGAL, AND DOES NOT PROMOTE SOUND SPECTRUM MANAGEMENT**

CTIA continues to oppose the proposal to give Nextel 10 MHz of contiguous spectrum outside of the 800 MHz band. As CTIA and other commenters have argued in the Supplemental Comments and throughout this proceeding, commercial licensees in the 800 MHz band, including Nextel, should not receive additional spectrum inside or outside of the 800 MHz band without having to pay for such spectrum through the auction process.<sup>39</sup> "Replacement spectrum"

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<sup>38</sup> See *Comments of Motorola Inc.*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 14-15 (filed February 10, 2003.).

<sup>39</sup> See *Comments of Access Spectrum, LLC*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 11-19 ("Access Spectrum").

is not necessary to make parties whole within the 800 MHz band if the licensees simply reorganize *within* the band. The Commission must maintain the integrity of its auction and spectrum allocation processes throughout this proceeding.

As CTIA and multiple commenters stated in their Supplemental Comments and in previous comments, in the event Nextel were “given” any spectrum outside the 800 MHz band to be used for terrestrial services, this spectrum grant would be inconsistent with Section 309 (j) of the Communications Act.<sup>40</sup> Nextel can provide no legal justification for the Commission to avoid its obligations under Section 309 (j) in order to provide the company with a spectrum windfall.<sup>41</sup> As CTIA has argued in the past, any outright grant of spectrum to Nextel without Nextel having to go through an auction would be susceptible to a legal challenge since any spectrum reallocated for a terrestrial service in the MSS or unlicensed PCS bands must be auctioned.<sup>42</sup> The likelihood that legal proceedings would derail the entire 800 MHz “Consensus Plan” approach is a significant risk that the Commission need not, and should not, take.

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*Spectrum Comments*” (filed February 10, 2003); see also *Verizon Wireless Comments* at 12-15; see *Comments of ALLTEL, Cingular, AT&T, Sprint, Southern LINC, and US Cellular* at 10.

<sup>40</sup> See *Comments of Access Spectrum, LLC*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, DA 03-19, at 17 (filed February 10, 2003.); see also *Verizon Wireless Comments* at 12; see *Comments of ALLTEL, Cingular, AT&T, Sprint, Southern LINC, and US Cellular* at 10.

<sup>41</sup> See *Reply Comments of the National Association of Manufacturers and MRFAC, Inc.*, In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, at 5 (filed August 7, 2002) (stating that giving Nextel spectrum outside of the 800 MHz band makes no sense as “it indirectly rewards the party who is responsible for the interference.”).

<sup>42</sup> See CTIA’s *Comments, Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band*, IB Docket No. 01-185, ET Docket No. 95-18 (Oct. 22, 2001) at 7; CTIA’s *Reply Comments, Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band*, IB Docket No. 01-185, ET Docket No. 95-18 (Nov. 12, 2001) at 4.

#### **IV. OTHER APPROACHES PROVIDE A BETTER SOLUTION THAN THE JOINT COMMENTERS' PLAN**

##### **A. CTIA's Proposal Will Provide a Less Complicated, Less Disruptive, and More Timely Solution to the Public Safety Interference Problem.**

As detailed above, the Joint Commenters' plan to reband 800 MHz is both inadequate and unworkable. It benefits Nextel, but fails to completely address the core issue in this proceeding -- interference. As CTIA has stated throughout this proceeding, as an *immediate* first step to ameliorate the interference problems, the Commission should build on existing efforts to address interference incidents by organizing a special task force of wireless carrier and Public Safety representatives to ensure even better coordination of efforts to eliminate interference to Public Safety users on a case-by-case basis.<sup>43</sup> The Joint Commenters highlighted the importance of such an effort when they stated that even after rebanding, incidents of interference would remain that have to be addressed with mitigation efforts.<sup>44</sup>

As CTIA stated in its Supplemental Comments, if the Joint Commenters believe that their mitigation efforts will work as part of the follow up, why can't they be employed as the primary measure to address interference from the outset? The National Rural Electric Cooperative Association agreed, adding that, "acknowledgement by the Consensus Plan filers that technical solutions and individual negotiations among licensees are necessary parts of the solution begs the question why these alternatives should not be explored as the first, and perhaps only, needed step

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<sup>43</sup> See *Comments of the Cellular Telecommunications & Internet Association, Improving Public Safety Communications in the 800 MHz Band, Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket No. 02-55 (May 6, 2002) ("CTIA Original Comments").

<sup>44</sup> See *Joint Commenters' Supplemental Comments* at 39-44, Appendix F. (According to the *Supplemental Comments*, in some cases, more than 1/3 of the incidents of interference will remain after the rebanding is complete.). *Id.* at Appendix F.

to resolve harmful interference within the 800 MHz band."<sup>45</sup> The Communications Division of the Michigan Department of Information Technology concluded logically that “if interference will exist after the planned realignment, is the Plan truly the best approach.”<sup>46</sup>

Experience has shown that utilization of best practices and coordination efforts can mitigate the vast majority of the interference problems. Given the successful track record of good faith case-by-case mitigation, this approach would provide the Commission with immediate action, allowing them to then focus on those cases, if any, where industry-led mitigation efforts are not successful in resolving the interference.<sup>47</sup> As CTIA has detailed above and in its previous Comments, experience to date has been that any interference caused by cellular licensees can be effectively addressed by technical mitigation techniques, and may not require the major step of relocating all of the 800 MHz incumbents as a remedy.

As CTIA detailed in its Supplemental Comments, if the Public Safety entities ultimately find that the mitigation steps outlined above do not adequately address interference concerns, as a next step the Commission should consider a plan that restructures the 800 MHz band spectrum assignments *within* the 800 MHz band.<sup>48</sup> If it can be demonstrated that the 800 MHz band can be rebanded in a way that minimizes interference, the incumbent 800 MHz licensees should be made whole, not more, *within* that band. Rebanding of 800 MHz by relocating incumbents within the band must be accomplished in a way that minimizes harmful interference and ensures

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<sup>45</sup> See *National Rural Electric Cooperative Association Comments* at 2.

<sup>46</sup> See *Michigan Comments* at 6.

<sup>47</sup> See *CTIA Original Comments* at 7-8.

<sup>48</sup> See, e.g., *CTIA Supplemental Comments* at 11-15. (As CTIA noted in these comments, consideration of “swap” options involving the 700 and 900 MHz bands might be appropriate.).

each licensee involved in the rebanding maintains its current operational capabilities and subscriber capacity. Such a step must be both cost effective and interim in nature.

While CTIA agrees that some rebanding of 800 MHz may make sense, the optimal solution to Public Safety's requirements for interference-free and interoperable networks is to redeploy their systems in the 700 MHz band. This will allow Public Safety to operate in an interference-free environment.<sup>49</sup> Additionally, it will allow Public Safety to upgrade their equipment.<sup>50</sup> The Commission should work with the wireless industry, Public Safety, and other affected parties -- including Congress to the extent legislation is necessary -- to cooperate in allocating and transferring the requisite amount of spectrum in the 700 MHz band to Public Safety/Critical Infrastructure uses.

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<sup>49</sup> See *Comments of ALLTEL, Cingular, AT&T, Sprint, Southern LINC, and US Cellular* at 18.

<sup>50</sup> See *Verizon Wireless Comments* at 16.

## V. CONCLUSION

For these reasons, CTIA respectfully requests that the Commission not implement the Joint Commenters' plan and should instead adopt CTIA's proposal as set forth in its Comments on February 10, 2002. The Commission should conduct a rigorous cost/benefit analysis as part of any decision in this proceeding, and as the comments of multiple parties have demonstrated, the costs in terms of time and resources of the Joint Commenters' Plan far outweigh the uncertain benefits and legal risk involved.

Respectfully submitted,

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